

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

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Telephone Number:

Refer Reply To:

CC:FIP:B01

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Date:

April 17, 2007

Legend:

Taxpayer =

Year 1 =

Year 2 =

Year 3 =

a =

Dear :

This is in reply to a letter dated September 12, 2006, requesting a ruling on behalf of Taxpayer. You requested a ruling that pursuant to section 857(d)(1) of the Internal Revenue Code, Taxpayer's earnings and profits will not be reduced by the amount of a proposed distribution to one class of shareholders.

Facts:

Taxpayer is a domestic corporation that has elected under section 856(c) to be treated as a real estate investment trust (REIT) for federal income tax purposes. Taxpayer is engaged in the acquisition and holding of subordinate commercial mortgage-backed securities (CMBS), which are issued by real estate mortgage investment conduits (REMICs).

Taxpayer has three classes of common stock: Class A, Class B, and Class C. Taxpayer makes quarterly pro rata dividend distributions to all three classes of common stock.

During Year 1 and Year 2, Taxpayer entered into separate transactions which generated significant amounts of cash (Excess Cash) that primarily represented a return of Taxpayer's investment in the CMBS. As the transactions closed, Taxpayer made distributions of the Excess Cash. The distributions were made separately from the quarterly pro rata dividend distributions paid to the three classes of common stock.

In Year 3, it was determined that the distributions of the Excess Cash in Year 1 and Year 2 were made only to the Class A and Class C shareholders. The Class B shareholders' pro rata share of the Excess Cash distributions would have been approximately \$a, cumulatively.

Taxpayer intends to make a distribution (the Proposed Distribution) to the Class B shareholders of an amount which is proportional to the Excess Cash distributions made to the Class A and Class C shareholders in Year 1 and Year 2. Taxpayer represents that the Proposed Distribution will be a preferential dividend within the meaning of section 562(c). Taxpayer will not take a deduction for dividends paid for the amount of the Proposed Distribution.

Law and Analysis:

Section 857(d)(1) provides that the earnings and profits of a real estate investment trust for any taxable year (but not its accumulated earnings) shall not be reduced by any amount which is not allowable in computing its taxable income for such taxable year.

Section 857(b)(2)(B) provides that in determining real estate investment trust taxable income, the deduction for dividends paid (as defined in section 561) shall be allowed.

Section 561(a) provides that the deduction for dividends paid shall be the sum of the dividends paid during the year, and the consent dividends for the taxable year.

Section 562(a) provides that the term "dividend" shall include only dividends described in section 316.

Section 562(c) provides that the amount of any distribution shall not be considered as a dividend for purposes of computing the dividends paid deduction, unless such distribution is pro rata, with no preference to one class of stock as compared with another class, except to the extent that the former is entitled to such preference.

Section 1.562-2(a) of the Income Tax Regulations provides that a corporation will not be entitled to a deduction for dividends paid with respect to any distribution upon a class of stock if there is distributed to any shareholder of such class (in proportion to the number of shares held by him) more or less than his pro rata part of the distribution as compared with the distribution made to any other shareholder of the same class. Nor will a corporation be entitled to a deduction for dividends paid in the case of any distribution upon a class of stock if there is distributed upon such class of stock more or less than the amount to which it is entitled as compared with any other class of stock. A preference exists if any rights to preference inherent in any class of stock are violated. The disallowance, where any preference in fact exists, extends to the entire amount of the distribution and not merely to a part of such distribution.

As described above, the Proposed Distribution is a preferential dividend, which is not considered a dividend for purposes of the dividends paid deduction. Section 562(c) and section 1.562-2(a). Therefore, the Proposed Distribution is not an amount which is allowable in computing taxable income. See section 857(b)(2)(B). Under section 857(d)(1), earnings and profits for a taxable year are only reduced by amounts which are allowable in computing taxable income for that taxable year. Accordingly, the Proposed Distribution will not reduce Taxpayer's earnings and profits.

Except as specifically ruled upon above, no opinion is expressed concerning any federal income tax consequences relating to the facts herein under any other provision of the Code. Specifically, we do not rule whether Taxpayer otherwise qualifies as a REIT under part II of subchapter M of Chapter 1 of the Code.

This ruling is directed only to the taxpayer requesting it. Taxpayer should attach a copy of this ruling to each tax return to which it applies. Section 6110(k)(3) of the Code provides that this ruling may not be used or cited as precedent.

Sincerely,

/S/

Elizabeth A. Handler
Chief, Branch 1
Office of Associate Chief Counsel
(Financial Institutions & Products)

Enclosures:

Copy of this letter
Copy for section 6110 purposes